

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MAX AYERS)	
Claimant)	
VS.)	
)	Docket No. 1,000,987
BRACKETT, INC.)	
Respondent)	
AND)	
)	
AMERICAN HOME ASSURANCE COMPANY,)	
Insurance Carrier)	

ORDER

Respondent appeals Administrative Law Judge Brad E. Avery's June 21, 2002, preliminary hearing Order for Medical Treatment and June 21, 2002, Order Referring Claimant for Independent Medical Evaluation.

ISSUES

After the June 17, 2002, preliminary hearing, the Administrative Law Judge (ALJ) entered two orders on June 21, 2002. The first order granted claimant's request for psychological treatment through psychologist Dr. Melvin Berg.¹ The second order referred claimant to Dr. Lynn Curtis for an independent medical evaluation for a disability rating and for an opinion regarding what, if any, additional medical treatment is necessary to cure and relieve the effects of claimant's work-related injury.

The respondent appeals and argues that the ALJ erred in granting claimant's request for treatment for his alleged psychological problems. The respondent contends that claimant's psychological problems are not directly traceable to his work-related physical injury. Instead, the respondent argues claimant's psychological problems are related to his personal problems and are not compensable. Additionally, the respondent argues the ALJ exceeded his jurisdiction by ordering an independent medical evaluation of claimant because the order granting claimant's request for treatment for psychological

¹ The ALJ's June 21, 2002, preliminary hearing Order for Medical Treatment identified the appointed authorized treating health care provider as Dr. Bery instead of Dr. Berg. But this was a typographical error as the preliminary hearing transcript specifically identified psychologist Dr. Berg as the requested authorized treating health care provider.

problems indicates claimant has not met maximum medical improvement as required for a disability rating.

Claimant, however, contends the respondent's appeal of the two orders should be dismissed because the Appeals Board (Board) does not have jurisdiction to review either of the orders.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the arguments contained in the parties' briefs, the Board makes the following findings and conclusions:

The claimant injured his right upper extremity on November 13, 2001, while plugging an electrical cord of a machine into a 220/440 electrical outlet at work. The plug or outlet was defective and claimant suffered a severe shock to his right upper extremity.

The day after the work accident, November 14, 2001, the respondent sent claimant to Dr. Dick Geis for examination and treatment recommendations.

Dr. Geis saw claimant on five occasions between November 14, 2001, and April 11, 2002. He referred claimant for a neurological consultation and a consultation with a physical medicine and rehabilitation physician. Dr. Geis placed claimant in an extensive occupational therapy program, prescribed an anti-inflammatory and pain medications and instructed claimant in a home exercise program. Dr. Geis also recommended that claimant be referred to Kansas University Medical Center for an additional neurological examination but respondent's insurance carrier did not approve that referral.

Although claimant showed little improvement, on April 11, 2002, Dr. Geis determined that claimant had met maximum medical improvement and released claimant to modified work using his left upper extremity only. The occupational therapy was discontinued, claimant was instructed to continue his home exercise program and claimant was instructed to continue to take the anti-inflammatory and pain medications. Dr. Geis opined he did not know of any further medical treatment to offer claimant which would provide any significant improvement to his continuing numbness and pain in his right upper extremity.

On March 27, 2002, claimant's attorney referred claimant for a psychological evaluation with psychologist Dr. Melvin Berg. After taking a history from claimant and conducting an examination of claimant, Dr. Berg concluded that claimant's work-related accident and resulting right upper extremity injury, "had a devastating impact on his self esteem as well as his sense of emotional well being and financial security." Dr. Berg

concluded that claimant was suffering from a major depressive disorder and alcohol abuse secondary to his depression.²

The initial issue the Board will address is whether it has jurisdiction to review the two subject orders. First, the Board finds the ALJ did not exceed his jurisdiction when he referred claimant for an independent medical evaluation. K.S.A. 44-516 specifically authorizes the appointment of an independent medical examiner in case there is a dispute as to the injury. The statute also grants the ALJ the discretion to direct the independent medical examiner to the medical issues needed to be addressed as a result of the examination.

Second, the Board finds that the respondent does not dispute that claimant's right upper extremity injury is compensable.³ Here, the dispute arises as to whether claimant's alleged psychological problems are directly traceable to his physical right upper extremity injury.⁴ The Board concludes, as it has on numerous other occasions, that the issue here is the nature and extent of the injury as opposed to the compensability issue which would grant the Board jurisdiction to review the preliminary hearing Order.⁵ Therefore, the Board finds it does not have jurisdiction, at this juncture of the proceeding, to review the nature and extent of injury issue of whether claimant's psychological problems are directly traceable to claimant's work-related physical right upper extremity injury.

WHEREFORE, the Board finds and concludes that respondent's appeal of both the subject orders should be dismissed as the Board is without jurisdiction to review ALJ Brad E. Avery's June 21, 2002, preliminary hearing Order for Medical Treatment and the June 21, 2002, Order Referring Claimant for an Independent Medical Evaluation.

IT IS SO ORDERED.

Dated this ____ day of November 2002.

BOARD MEMBER

² P.H. Trans., Cl. Ex. 1.

³ P.H. Trans. at 3.

⁴ See *Love v. McDonald's Restaurant*, 13 Kan. App. 2d 397, Syl. ¶ 1, 771 P.2d 557, rev. denied 245 Kan. 784 (1989).

⁵ See *Anno-Pfortmiller v. Delta Design*, No. 196,588, 1996 WL 670506 (Kan. WCAB October 25, 1996).

c: Roger D. Fincher, Attorney for Claimant
 Matthew S. Crowley, Attorney for Respondent
 Brad E. Avery, Administrative Law Judge
 Director, Division of Workers Compensation